



ATTORNEY DOCKET NO. 03073.0001U2
SERIAL NO. 09/764,826

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of)
JORDAN et al.)
Serial No. 09/764,826) Group Art Unit: 1641
Filed: January 17, 2001) Examiner: CHIN, CL
For: "METHOD AND APPARATUS FOR) Confirmation No.: 8834
DETECTING CONCEPTION IN ANIMALS")

ELECTION UNDER RESTRICTION REQUIREMENT

Commissioner for Patents
Washington, DC 20231

NEEDLE & ROSENBERG, P.C.
The Candler Building
127 Peachtree Street, N.E.
Atlanta, GA 30303-1811

February 26, 2003

Sir:

This is responsive to the September 30, 2002 Office Action, wherein restriction of the claims is required regarding the above-referenced patent application. A Request for Extension of Time is filed herewith.

The Office Action requires restriction to one of four groups of claims.

Group I: Claims 1-4, drawn to an antibody, classified in class 530, subclass 387.1;

Group II: Claims 5-8 and 11-14, drawn to a method to detect conception, classified in class 435, subclass 7.9;

Group III: Claims 9-10, drawn to a method to detect the absence of conception, classified in class 435, subclass 7.1; and

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Group IV: Claims 15-22, drawn to an apparatus, classified in class 435, subclass 287.2.

Applicants provisionally elect Group II, claims 5-8 and 11-14, with traverse.

Applicants also request that the restriction requirement be reconsidered because the Examiner has not shown the existence of independent and distinct inventions in all the claim groupings or that a serious burden would result if all the claims were examined together.

M.P.E.P. § 803 provides:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to distinct or independent inventions. (*Emphasis added.*)

Thus, for a restriction requirement to be proper, the Examiner must satisfy the following two criteria: (1) the existence of independent and distinct inventions (35 U.S.C. § 121) and (2) the search and examination of the entire application cannot be made without serious burden.

In the alternative to withdrawing the restriction requirement, applicants respectfully request modification of the restriction requirement. The Examiner has not shown that a serious burden would result if the claims of Groups II and III (claims 5-8, 9-10 and 11-14) were to be examined together. Claims 5-14 recite a method for detecting the presence or absence of conception, comprising detecting the presence or absence of early conception factor. The steps for detecting early conception factor are the same for all the claims in Groups II and III. In Group II, early conception factor is detected, thereby detecting the presence of conception; in Group III, early conception factor is not detected, thereby detecting the absence of conception. Moreover, the claims of Groups II and III can be searched without serious burden because they are in the same class.

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Applicants respectfully assert that restriction of the claims as set forth by the Examiner would be contrary to promoting efficiency, economy and expediency in the U.S. Patent and Trademark Office and further point out that restriction by the Examiner is discretionary (M.P.E.P. § 803.01). Thus, applicants respectfully request that the restriction requirement be withdrawn or, in the alternative, that the claims of Groups II and III (claims 5-14) be examined together. Therefore, reconsideration and withdrawal or modification of the restriction requirement is requested.

A Credit Card Payment Form PTO-2038 authorizing payment in the amount of \$725.00 for a four (4) month extension of time fee and a Request for Extension of Time are enclosed. This amount is believed to be correct; however, the Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment to Deposit Account No. 14-0629.

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I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, Washington, D.C. 20231, on the date shown below.

Gwendolyn D. Spratt

2-26-3

Date: February 26, 2003